

EXHIBIT 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LINCOLN JONES, JR., ET AL.,)
Plaintiffs,) Civil Action No.
) CV-13-02390 LHK PSG
VS)
)
TRAVELERS CASUALTY INSURANCE)
COMPANY OF AMERICA,)
Defendant.

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER
PAGES 46 through 64

DEPOSITION OF: Brian Kearney
DATE: September 19, 2014
HELD AT: Day Pitney LLP
242 Trumbull Street
Hartford, Connecticut

Reporter: Robin Balletto, RPR, LSR #230
BRANDON HUSEBY REPORTING & VIDEO
249 Pearl Street
Hartford, Connecticut 06106
(860) 549-1850

1 Brian Kearney, Deponent, having been
2 first duly sworn by Robin Balletto, RPR, a Notary
3 Public in and for the State of Connecticut, was
4 examined and testified as follows:

5

DIRECT EXAMINATION BY MR. BRANCART

7

8 Q Good morning, sir.

9 A Good morning.

10 Q Would you please state your full name and
11 spell it?

12 A Brian Kearney, last name is K-E-A-R-N-E-Y.

13 Q Mr. Kearney, what is your middle name?

14 A Thomas.

15 Q Other than the first name of Brian, do you go
16 by any other first name, common name, or nicknames in
17 the course of your work in the insurance industry?

18 A NO.

19 Q The court reporter just administered an oath.

20 A Yes.

21 Q What does that oath mean to you?

22 A It means that I need to state the truth.

23 Q Would you please state for me your current
24 job title?

25 A I am the vice president of underwriting for

9/19/2014

Kearney, Brian

1 stating what the underwriting principal is that's
2 caused the ineligible list and includes subsidized
3 housing as being an ineligible operation.

4 Q I'm not asking about the underlying
5 principal, sir. I'm asking a very focused question
6 which concerns information broadly defined as data.

7 Sir, did any Travelers employee at any time
8 review any data or information in connection with the
9 development, review, approval, implementation or
10 execution of the ineligible operation regarding public
11 housing?

12 MR. PETERSON: Objection, overbroad,
13 vague.

14 A I don't know.

15 BY MR. BRANCART:

16 Q Did any Travelers employee at any time in the
17 period 2005 to 2014 review any information in
18 connection with their development, review, approval,
19 implementation or execution of the ineligible operation
20 regarding public housing?

21 MR. PETERSON: Same objection. It's
22 overbroad.

23 A Not that I'm aware of. It's been on the
24 ineligible operation list as currently stated since the
25 2005 CURE, and as such, it's not been a focus of the

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156

9/19/2014

Kearney, Brian

1 business to find ways to change that. We've been
2 focusing more on that business that is within our
3 current eligibility structure.

4 BY MR. BRANCART:

5 Q But I mean, the question then for the period
6 2000 to 2005, did any Travelers employee review any
7 study regarding -- any study in connection with the
8 development, review, approval, implementation or
9 execution of the ineligible operation regarding public
10 housing?

11 MR. PETERSON: Objection, overbroad.
12 Calls for speculation.

13 A Not that I'm aware of. I know going back to
14 1999 both St. Paul as a separate company and Travelers
15 had specific direction within their underwriting
16 guidelines for apartment buildings to either make
17 Section 8 housing ineligible or have it be a referred
18 company. When the companies came together in 2004 I
19 know that that changed and it became part of a stated
20 ineligibility, and then in the 2005 CURE the wording
21 changed to how it stands today, so from the history
22 back to '99 it's been on the ineligible list, and to my
23 knowledge no studies or no work data has been reviewed
24 to change that.

25 Q So the testimony on behalf of Travelers is

9/19/2014

Kearney, Brian

1 for the period since 2000 to today, no Travelers
2 employee has reviewed a study, data, HUD document with
3 the exception of the e-mail that you've identified in
4 Exhibit 220?

5 A Not that I'm aware of and could find no
6 evidence of that.

7 Q In connection with the ineligible operation
8 for public housing; is that correct?

9 MR. PETERSON: Object to the form of the
10 question as overbroad and vague as to employee.

11 A Yes, but there's no evidence that there's
12 been any review of a study on this ineligible
13 operation.

14 BY MR. BRANCART:

15 Q Going back to the period 1995 to 2000,
16 identify for me, please, what studies were considered
17 or reviewed by any Travelers employee or predecessor
18 employee such as St. Paul?

19 A I'm not aware --

20 MR. PETERSON: Excuse me, I'm sorry, I
21 didn't realize he was finished. Objection to the form
22 of the question as exceeding the scope of the
23 deposition. Calls for speculation.

24 BY MR. BRANCART:

25 Q Let me just get out the question. My

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158

9/19/2014

Kearney, Brian

1 question is, going back to 1995 to 2000, are you aware
2 of any, and let me be broad so we can get done with
3 this, study, HUD document, with the exception of the
4 e-mail you've identified in Exhibit 220, data set or
5 information that was reviewed or considered by any
6 Travelers employee or organization that became, such a
7 St. Paul, part of the Travelers Companies in connection
8 with the development, review, approval, implementation
9 or execution of the ineligible operation regarding
10 public housing?

11 A No, not that I'm aware of.

12 Q Please state for me what interest is advanced
13 by Travelers through the adoption and enforcement of
14 the ineligible operation regarding public housing, now
15 as our shorthand for subsidized or government funded or
16 public housing complexes?

17 A I'm not sure. You're asking -- could you
18 repeat the question?

19 Q Sure. First, just so we're clear, just so
20 that we don't have to spend all day saying words over
21 and over again, when we're saying ineligible operation
22 regarding public housing, you understand that I'm
23 referring to the ineligible operation we've been
24 discussing. It has been written in different ways, but
25 we're using that as a catchall term for our purposes

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159

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Kearney, Brian

1 right now. Do you understand that?

2 A Yes.

3 Q We'll go through its evolution in a minute,
4 but we're talking generally about that IO, to that type
5 of particular function within housing.

6 My question to you is, state for me what
7 interest is advanced of Travelers by instituting,
8 implementing and enforcing the ineligible operation
9 regarding public housing?

10 A So I'm struggling because of the way you've
11 posed the question, what interest is advanced. I look
12 at it very basically in that subsidized or public
13 housing is a specialized type of housing that requires
14 knowledge of how the subsidies work, how they might be
15 administered in different jurisdictions, and how they
16 may change over time. That would be knowledge that we
17 don't currently have today at Travelers that we would
18 need to gain, and as a result it doesn't -- this type
19 of operation doesn't fit within our operating model
20 within Travelers Express, which is a very fast,
21 efficient, low cost, low touch operating model. So
22 we've designed our underwriting eligibility to capture
23 more low hazard, more easily defined risks that don't
24 require a lot of touch, both on the front end and on
25 the renewal side. So that's why we see all of the

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160

9/19/2014

Kearney, Brian

1 occupancies on the ineligible operations list are all
2 considered to be specialized, requiring some level of
3 special knowledge and perhaps some special treatment.

4 So I guess our interest is that the
5 ineligible operations list allows us to sustain our
6 operating model, low touch, quick, efficient, and not
7 have to change that for other types of specialized
8 occupancies that would require a different operating
9 model.

10 Q State for me, please, what interest is
11 advanced by Travelers by classifying Section 8 voucher
12 tenants renting dwellings within private rental
13 apartments owned and operated by private landlords,
14 what interest is advanced by Travelers by classifying
15 Section 8 as public housing or subsidized housing for
16 purposes of the ineligible operation?

17 MR. PETERSON: Excuse me, object to the
18 form of the question as to the phrase interest advanced
19 as vague and ambiguous and also to the word
20 classification as vague. You may answer the question.

21 A So Travelers has subsidized housing in
22 Section 8 vouchers, or I should say subsidizing housing
23 as the language that would include Section 8 vouchers.
24 Because it's a different financial arrangement than a
25 traditional market rent, fully paid tenant paying rent

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161

9/19/2014

Kearney, Brian

1 voucher tenants renting in a private apartment that
2 justify treating that apartment at risk as different
3 from an identical apartment that doesn't happen to have
4 a Section 8 voucher tenant?

5 MR. PETERSON: Object to the form of the
6 question as compound and use of the word justifying as
7 argumentative, mischaracterizes his prior testimony.
8 You may answer the question.

9 A So the questions or concerns we may have is,
10 is it still a market rent for that subsidized unit, how
11 does the program change, and is it administered in a
12 different way in a different jurisdiction. There's
13 also concerns, I've read some studies with regard to
14 Section 8 housing tenants may have a higher
15 preponderance of disability or mobility issues which
16 could lead to understanding the life safety concerns
17 that we would have underwriting apartment complexes.
18 There's the question about with regard to the financial
19 cash flow capital, whether the -- as a result is the
20 building owner getting sufficient funds to maintain the
21 property, and there could be others as well. We
22 haven't studied really this realm of housing to know
23 the answers, but just the number of things that I've
24 brought up, you know, tells us that it's a specialized
25 realm within the housing segment, and as such would

9/19/2014

Kearney, Brian

1 require a different underwriting approach than what we
2 currently provide within Travelers Express with even a
3 potential different way of pricing for it than what we
4 have currently in Travelers Express.

5 BY MR. BRANCART:

6 Q Currently Travelers Express, specifically --
7 I'm sorry, prior to the 2nd Gen Travelers Express
8 specifically required independent agents to populate
9 the interface with cash flow data; is that correct?

10 A So prior to 2nd Gen, there still would be a
11 connection to D&B, but that would be the extent of any
12 kind of financial information we would get. The
13 challenge with underwriting --

14 Q I'm sorry --

15 MR. PETERSON: Can he finish his answer?

16 MR. BRANCART: He can finish it, but
17 we're going to start asking some very specific yes or
18 no questions to examine this. I would like you to
19 answer these yes or no, because we can go to the
20 website, which I haven't been provided, I got some
21 screen shots, I don't see this there, but you're going
22 to answer the questions about Travelers. Do you want
23 to have him answer further now?

24 MR. PETERSON: I would like him to
25 finish his answer.

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164

9/19/2014

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1 BY MR. BRANCART:

2 Q Please.

3 A I was going to say in small commercial it's a
4 balance of what information we can readily access and
5 get, and where do we have to understand based on our
6 knowledge of the market what information we have to
7 imply, so in a case around financials we don't ask
8 specific questions.

9 Q So the answer to my question is Travelers
10 does not require independent agents to populate cash
11 flow data in the 1st Gen Travelers Express in terms of
12 the Apartment Pac, correct?

13 A Correct.

14 Q Travelers Express 1st Gen Apartment Pac, data
15 is required to be entered by the independent agent as
16 to when rents are collected by a landlord; is that
17 correct?

18 A No.

19 Q Number three is the rents that are charged by
20 a landlord, and specifically an algorithm that compares
21 those rents to the market rents for comparable housing,
22 is that built in to data that is gathered through 1st
23 Gen Travelers Express for Apartment Pac?

24 A No, it's not.

25 Q The amount of monies allocated or expended by

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165

9/19/2014

Kearney, Brian

1 a landlord for maintenance of an apartment building, is
2 that populated by the independent agent, and therefore,
3 considered by Travelers?

4 A That specific information isn't populated,
5 but what we do is look at the information around the
6 age of the building, updates that may have been made to
7 the building based on the age that's input. We also
8 look at the amount of vacancy as another proxy for a
9 stable financially run apartment building, and really
10 use that in conjunction with knowing that in a
11 nonsubsidy situation the building owner is getting rent
12 through normal lease arrangement, and has the ability
13 to collect, or if not collect, begin down the path of
14 eviction in a way that -- we use that all as a proxy to
15 know that that should be sufficient. The presence of
16 the subsidy creates enough difference that we would
17 have to understand that in a way that doesn't really
18 fit our model.

19 Q Whether a private apartment building has a
20 Section 8 voucher holder as a tenant or not, Travelers
21 is still able to obtain information regarding the age
22 of that building, true?

23 A Travelers has the ability to get that
24 information.

25 Q And age of the building is something that

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166

9/19/2014

Kearney, Brian

1 Express interface by the agent, true?

2 A There is an ineligibility around vacancy. If
3 it's greater than -- they have to have occupancy of
4 greater than 80 percent or greater to be considered
5 eligible.

6 Q That information is available for a landlord
7 who rents to one or more tenants who receives a Section
8 voucher just as it would be for that very same
9 landlord in the very same building if they did not rent
10 to one or more tenants who receives a Section 8
11 voucher, correct?

12 A We would have to take the agents -- in both
13 cases we're taking the agents word for that.

14 Q Let's put it in clearer terms. There is
15 nothing causally connected with the presence or
16 nonpresence of a Section 8 voucher holder in effecting
17 the age of a building, whether updates were made to a
18 building, or the current vacancy rates of a building,
19 those are both independent variables, true?

20 MR. PETERSON: Objection, lacks
21 foundation.

22 A That would be true in my mind.

23 BY MR. BRANCART:

24 Q Travelers Express requires that there be a
25 specific disclosure as to the nature of the rental

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168

9/19/2014

Kearney, Brian

1 agreement or lease that the landlord enters into with
2 each of the tenants who rent in the apartment building.

3 Is that correct?

4 A No, there's no requirement for that.

5 Q Well, it requires a disclosure of the
6 mechanism by which the landlord will pursue eviction if
7 money is not paid; isn't that correct?

8 A There is no specific stipulation within
9 Travelers Express asking for that information. As I
10 had stated earlier, when we define our appetite, it's
11 based on knowing, our knowledge, our business
12 knowledge, our risk taking appetite of a particular
13 class and type of business. As a result, we structure
14 our underwriting questions and our underwriting rules
15 based on what we as a business, as a company understand
16 about that. We understand the traditional apartment
17 building owner with nonsubsidized tenants collecting
18 rent on a monthly basis with a certain level of
19 occupancy and tenancy, and what they should be able to
20 do legally in the event that rent isn't paid in order
21 to sustain the appropriate level of cash flow.

22 In the event of a subsidy, including Section
23 8 vouchers, I couldn't explain to you today the
24 difference between a Section 8 voucher and any other
25 kind of subsidy, because we don't have the knowledge of

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169

9/19/2014

Kearney, Brian

1 those programs within Travelers, and as a result,
2 that's why we don't have specialized knowledge, we
3 don't understand beyond the concerns of the financial
4 and management, and as I mentioned, mobility issues as
5 well as others, we just don't understand the risk, and
6 as a result have not built and researched it in a way
7 to build it into our operating model. We view it, as I
8 believe the market does, as a more specialized kind of
9 risk within the housing market.

10 Q You mentioned, of course, collection as a
11 concern, and you do request in Travelers Express 1st
12 Gen information about how it is that a landlord intends
13 to collect rent; is that correct?

14 A No.

15 Q You mentioned capital issues. There is a
16 requirement in Travelers Express 1st Gen that there be
17 a disclosure of capital reserves, or some kind of
18 financial mechanism to ensure that landlords have
19 requisite capital to maintain their structures; is that
20 correct?

21 A No. We're looking at the level of occupancy
22 and the normal payment of rent as the primary piece of
23 information we need to make the assessment that we've
24 got enough stability.

25 Q I'm glad you mentioned disability. It is

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170

9/19/2014

Kearney, Brian

1 Travelers practice and policy to compel landlords to
2 disclose which of their tenants are disabled in order
3 to submit an application through Travelers Express; is
4 that correct?

5 A No. We don't collect information on,
6 specific information of that nature on tenants.

7 Q I understood that disability or mobility
8 impairments -- I'm sorry, it's mobility impairments.
9 You collect information on mobility impairments
10 regarding apartment buildings, and specifically the
11 mobility impairments of people living there as part of
12 the determination to qualify a landlord for an
13 Apartment Pac.

14 A No, we don't.

15 Q Travelers understands private rental housing
16 that doesn't have Section 8 or any subsidy; is that
17 your testimony?

18 A Yes.

19 Q Would you state for me the difference in the
20 eviction procedure between the state of California and
21 the state of Connecticut regarding the procedural
22 requirements and to what extent a landlord may request
23 back rents?

24 MR. PETERSON: Excuse me. Object to the
25 form of the question as calling for an opinion and is

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171

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Kearney, Brian

1 outside the scope of the deposition. It is verging on
2 harassment.

3 A I do not possess and we don't look at that
4 level of detailed information.

5 BY MR. BRANCART:

6 Q I'm sorry, let me -- there's an assumption
7 that there is an ability to collect and evict tenants
8 in a private market that somehow you believe is
9 different from the Section 8 program, and you would
10 recognize that Travelers is in 50 different markets
11 with 50 different state jurisdictions governing 50
12 different sets of landlord tenant laws, you do
13 recognize that?

14 A Yes.

15 Q And you further recognize that there is
16 substantial difference among the 50 state codes
17 regarding eviction and collection of rents, true?

18 MR. PETERSON: Objection. Calls for a
19 legal opinion. Outside the scope of the deposition.

20 A It would be my understanding that 50
21 different states would have 50 different regulations.

22 BY MR. BRANCART:

23 Q The importance of market rents, what is it
24 that -- put that aside. Sir, what is it that -- let me
25 withdraw that.

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172

9/19/2014

Kearney, Brian

1 raise one factor, and that was the change over time of
2 the Section 8 program. So Travelers presently collects
3 information for purposes of 1st Gen Travelers Express
4 Apartment Pac from a landlord that you can assess the
5 creditworthiness and/or the ability to pay rent by any
6 of the tenants in the dwelling that Travelers is about
7 to insure; is that correct?

8 MR. PETERSON: Excuse me. I object to
9 the preface of the question as argumentative and
10 mischaracterizing testimony. Go ahead.

11 A No, we don't collect that information. As I
12 said earlier, we collect -- we understand what the
13 operation is, and if it is private rental market with
14 no subsidy, then we make -- if there's been no losses,
15 they've been renting the building for a number of
16 years, we infer from that that there is an operation
17 that's running effectively.

18 BY MR. BRANCART:

19 Q Identify for me then -- I think we've gone
20 through every factor. Is there one I've missed that
21 you identified as factors that you thought were
22 distinguishing between Section 8 and -- let me finish.
23 Between a private landlord renting to one or more
24 Section 8 voucher holders and a private landlord, the
25 same landlord, identical landlord, identical building,

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176

9/19/2014

Kearney, Brian

1 think that's the only -- the existence of the presence
2 of the subsidy is the only thing that I've been able to
3 identify that you've been able to provide to me. Have
4 I missed -- is there anything else?

5 MR. PETERSON: Objection. Asked and
6 answered, mischaracterizes his testimony, and calls for
7 speculation as to what you've missed.

8 A It's the presence of the subsidy that creates
9 the distinction of trying to understand that it's
10 different.

11 BY MR. BRANCART:

12 Q So let's talk about the absence of the
13 subsidy then. State for me what are the assumptions
14 that are made by Travelers regarding private apartment
15 buildings where there is no Section 8?

16 A We set forth in our eligibility guidelines
17 certain criteria. I can't name them off the top of my
18 head, but a certain number of years in business, prior
19 insurance coverage, loss activity, age of the building,
20 certain age, upkeep of the building. We capture this
21 information to get a snapshot of the upkeep, the
22 management, the finances of the business. That is the
23 information that we use in order to determine whether a
24 risk is acceptable or not.

25 Q All of which is available whether that

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178

9/19/2014

Kearney, Brian

1 landlord accepts one Section 8 person or doesn't accept
2 any, true?

3 A I'm not --

4 Q The criteria you just listed, sir, is equally
5 available for a landlord who has no Section 8 tenants
6 and a landlord who one Section 8 tenant, true?

7 A The same information is available, but it is
8 the existence of the subsidy, again, that creates the
9 question.

10 Q So let's talk about the absence of the
11 subsidy. What is it about apartment buildings with an
12 absence of a subsidy. What assumptions do you make
13 that render that risk understandable whereas a landlord
14 who happens to have one of 15 tenants with a Section 8
15 voucher makes that risk alien, or unknowable, or
16 unknown?

17 A It comes down to how the subsidies work and
18 the payment to the insured, and do those ever lapse.
19 It really comes down to understanding the variety of
20 subsidies that could occur, do they, are they paid
21 differently, is market rent calculated in a different
22 way. There are just a number of questions that would
23 still come to mind, you know, to --

24 Q I would like you to state all of them.

25 A I don't know that I can state all of them. I

9/19/2014

Kearney, Brian

1 stated several. There likely could be more, but again,
2 without studying it and understanding it, it's a part
3 of the habitational market that we've stayed away from
4 because we don't understand it, and there hasn't really
5 been a need for us to understand it based on our
6 ability to write business in the housing market, and
7 it's my understanding that there are markets available
8 for subsidized housing.

9 Q I don't think you've added any new factors,
10 but let's go through them. One is concern about a
11 lapse of payment of rent. You identified that that was
12 something that was unknown, and yet there is no data
13 that is collected by Travelers under the original
14 Travelers Express or the 2nd Gen for Apartment Pac that
15 ascertains any data regarding lapse of rents, true?

16 MR. PETERSON: Objection, argumentative,
17 asked and answered.

18 A It is true.

19 BY MR. BRANCART:

20 Q There is no data that is gathered by
21 Travelers Express regarding Apartment Pac that
22 determines whether the rents that are being charged by
23 the landlord are at market or not, true?

24 A That's true, but I would say we infer that in
25 the private rental market that is part of our defined

9/19/2014

Kearney, Brian

1 BY MR. BRANCART:

2 Q Did you have any role in gathering, compiling
3 the information that is set forth in these
4 interrogatory responses which is Exhibit 209?

5 A Yes.

6 Q State for me what role you had in gathering
7 information that appears in Exhibit 209.

8 A Well, I discussed the various interrogatory
9 questions and responses as part of a discussion of this
10 case and helping to provide understanding to the
11 underwriting guidelines that we have in place with
12 regard to Apartment Pac, and then also talk to a number
13 of individuals to understand the history of those
14 guidelines.

15 Q Sir, you verified these interrogatories,
16 correct?

17 A For Exhibit 209 you're saying, yes.

18 Q That's your signature that appears there,
19 correct?

20 A Yes.

21 Q Sir, would you please identify for me the
22 niche insurers who serve private landlords renting on
23 the private housing market but who happen to have one
24 or more Section 8 tenants?

25 A I don't know that I understand that level of

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190

9/19/2014

Kearney, Brian

1 a niche. I do know that for subsidized housing
2 insurance there are markets that specialize in it. I
3 know Philadelphia Insurance has a program, I know Wells
4 Fargo is a broker, they have a special program for
5 subsidized housing insurance. I have not seen a
6 special niche of Section 8 only housing defined within
7 the marketplace as a specialized niche.

8 Q Sir, regarding private rental housing that
9 happens to rent to one or more -- that happens to rent
10 to one or more -- are you referring to the
11 interrogatories again, sir, 209?

12 A I thought you were, I'm sorry.

13 Q Could you please identify for me any insurer
14 who has developed specialized knowledge regarding
15 insuring private apartments that happen to rent to one
16 or more Section 8 tenants?

17 A I don't know if there is an insurer that's
18 got that level of specialization. It's not a marked
19 that we've actively looked to understand since it's
20 part of our ineligibility guidelines. I am aware that
21 subsidized, for subsidized housing there are special
22 programs --

23 Q Are you referring back to the interrogatories
24 again, sir?

25 A No, I thought you were, so I'm sorry for

9/19/2014

Kearney, Brian

1 following suit.

2 Q No, I'm just asking for your knowledge?

3 MR. PETERSON: So let him finish his
4 answer.

5 A So as you've narrowly asked the question
6 around private housing market with Section 8 tenants,
7 I'm not aware of a specialized carrier that is handling
8 that narrow market. I am aware that there are
9 specialized carriers looking at the subsidized housing
10 market, and I believe that's inclusive of Section 8 as
11 well.

12 Q Why do you form that belief -- let me ask you
13 this. That's just an assumption that you're making; is
14 that correct?

15 A Well, no. As I was engaging in some of this
16 research I did a Google search on subsidized housing
17 insurance and saw that there are companies marketing to
18 this, and I looked on those websites and saw how they
19 were -- how their applications were set up, and what
20 kind of information they were asking for.

21 Q Sir, let me ask the question again. I asked
22 if you had identified all the documents that you had
23 reviewed, and perhaps I should have been clearer when I
24 talk about documents. I meant the electronically
25 stored information or e-mails. I don't just mean

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192

9/19/2014

Kearney, Brian

1 to use in ascertaining the existence of the attribute
2 you identified for determining the distinction between
3 public and nonpublic housing?

4 A There's no tool that we ask our agents to
5 use. We ask them to talk to the insured and get the
6 answer to that question.

7 Q What definition do you provide to the
8 agents -- strike that.

9 Do you provide the attribute that you've
10 identified for distinguishing public from nonpublic
11 housing to the agents so they can communicate
12 consistently with the insureds or prospective insureds?

13 A We provide our agents with the ineligible
14 operations list and the underwriting guidelines as the
15 direction for engaging with the insureds to answer the
16 questions.

17 Q So there's no specific provision -- I think
18 you identified that it was owned and operated by the
19 government for public housing, that specific attribute
20 is not provided to the agents; is that correct?

21 A No, it's not. The only attribute that's
22 provided or the only words that are provided are the
23 ineligible operations wording.

24 Q What is government funded housing?

25 A It's housing that receives funding from the

9/19/2014

Kearney, Brian

1 BY MR. BRANCART:

2 Q Well, for purposes of the application of the
3 ineligible operation for government funded housing
4 complexes, does government funding for purposes of
5 housing construction, is that an attribute that would
6 convert nongovernmental housing into governmental
7 funded housing?

8 MR. PETERSON: Objection, overbroad.

9 Calls for a hypothetical.

10 A It could. We've never been asked to define
11 the question to that level.

12 BY MR. BRANCART:

13 Q Is a governmental funded or backed mortgage
14 an attribute that would convert nongovernmental housing
15 into governmental housing for purposes of the
16 application of the ineligible operation?

17 MR. PETERSON: Objection, compound.

18 A We've never defined the terms to that extent,
19 so...

20 BY MR. BRANCART:

21 Q Would you please provide me with an example
22 of government funded housing?

23 A I think my example would be similar to the
24 example I gave around public housing. We don't
25 necessarily define the terms differently between

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220

9/19/2014

Kearney, Brian

1 subsidized government funded or public housing. We
2 don't discern differences there.

3 Q Could you give me an example of government
4 funded housing as the term is used within the
5 ineligible operation?

6 MR. PETERSON: Objection, asked and
7 answered. Calls for a hypothetical.

8 A I don't have the expertise on government
9 funded or publicly funded or public housing to be able
10 to give you an example in this realm.

11 BY MR. PETERSON:

12 Q Please identify for me the instrument or tool
13 that Travelers presently employs to ascertain the
14 presence of this attribute you identified for
15 government funded housing which is capitalization and
16 financing from the government?

17 A Travelers doesn't have a tool for that. We
18 ask our agents to get that information.

19 Q What tool or instrument does Travelers
20 instruct its agents to utilize in connection with
21 ascertaining the attribute you've identified which is
22 capitalization or funding or financing in part from the
23 government?

24 MR. PETERSON: May I have that question
25 read back?

9/19/2014

Kearney, Brian

1 (Record read by the court reporter.)

2 A There is no specific tool. We ask our agents
3 to talk to their insureds and ascertain, ask the
4 question, provide the answer.

5 BY MR. BRANCART:

6 Q You've identified a specific attribute as
7 capitalization or financing in part from a governmental
8 source. Does Travelers instruct its agents to utilize
9 that question in determining whether or not a dwelling
10 falls within the ineligible operation?

11 A No, we don't ask that question individually.
12 We ask our agents to look --

13 Q I'm sorry?

14 MR. PETERSON: Can you speak up?

15 A We ask our agents to review the ineligible
16 operations list with the insured.

17 BY MR. BRANCART:

18 Q But there's no specific tool or instrument
19 that you ask them to utilize, correct?

20 A Correct.

21 Q The ineligible operation we're discussing is
22 subsidized, quote, government funded, quote, or public
23 housing complexes, end quote. It's written in the
24 disjunctive. Would you please state for me the
25 attributes or characteristics that distinguish public

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222

9/19/2014

Kearney, Brian

1 words for our staff or our agents.

2 Q What instrument or tool is utilized by
3 Travelers today in order to distinguish subsidized from
4 nonsubsidized housing?

5 MR. PETERSON: Objection, asked and
6 answered.

7 A There is no specific tool. We ask our agents
8 to work, to use our ineligible operations list in
9 discussing their operations with their insured.

10 BY MR. BRANCART:

11 Q What specific instrument or tool is utilized
12 or are agents instructed to use in determining the
13 distinction between subsidized and nonsubsidized
14 housing?

15 A The agents aren't provided a specific tool.
16 They're provided with our eligibility guidelines and
17 our ineligible operations list as the means to work
18 with their insureds.

19 Q When you say eligibility guidelines, what are
20 you referring to?

21 A The underwriting, the guidelines that we --
22 they're one of the exhibits that we have.

23 Q Exhibit, I think, 36 that we looked at.

24 MR. PETERSON: The witness is looking at
25 Exhibit 237.

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228

9/19/2014

Kearney, Brian

1 A I'm talking about the ineligible operations
2 list and the Apartment -- it's Exhibit 3948, Travelers
3 Apartment Pac and Apartment Pac Plus guide, shows
4 eligibility, general product features, underwriting
5 guidelines.

6 MR. PETERSON: Counsel, my witness is
7 getting tired, I'm getting tired. Can we take a break
8 shortly?

9 MR. BRANCART: We can. Let me just
10 finish this question.

11 BY MR. BRANCART:

12 Q So you were going to identify for me the
13 eligibility guidelines that are provided, and you can
14 just reference it by the Bates numbers on the bottom,
15 if you want.

16 A Yes, it's 3948 and 3954.

17 Q Sir, what are the attributes that distinguish
18 the term government funded housing from subsidized
19 housing as those terms are used in the ineligible
20 operations definition?

21 MR. PETERSON: Objection, asked and
22 answered.

23 A We don't have any separate attributes that we
24 provide our agents and internal staff. We just use our
25 underwriting guidelines in the ineligible list.

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229

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Kearney, Brian

1 BY MR. BRANCART:

2 Q Please state for me on behalf of Travelers
3 what differences are there in these two separate terms
4 presented in the disjunctive in the ineligible
5 operation subsidized housing versus government funded
6 housing?

7 MR. PETERSON: Counsel, you've asked
8 this question several times, he's answered it several
9 times.

10 A We don't provide any specific further
11 direction other than the words that are in the
12 ineligible operations list.

13 MR. PETERSON: Let's take a break.

14 MR. BRANCART: I'm just going to ask
15 this last question if I could.

16 BY MR. BRANCART:

17 Q I'm not asking you for what you provide, I'm
18 asking you for what Travelers intends to communicate by
19 having those two different terms written in the
20 ineligible operation.

21 MR. PETERSON: Asked and answered.

22 A And I thought I had answered it already. We
23 let those words speak for themselves. We have not
24 gotten any questions asking to better clarify either
25 internally or from our agents, and as a result, we

9/19/2014

Kearney, Brian

1 haven't clarified them in any greater detail.

2 BY MR. BRANCART:

3 Q Last question is, could you please draw then
4 the distinction in meaning between public housing and
5 subsidized housing as those terms are used in the
6 ineligible operation?

7 MR. PETERSON: Objection, asked and
8 answered.

9 A Again, we don't spend -- we have no direction
10 internally or externally to our agents defining those
11 terms in any more detail than how they're listed in the
12 ineligible operations list.

13 MR. PETERSON: Let's take a break.
14 We're going off the record.

15 (Recess: 5:43 p.m. to 5:55 p.m.)

16 BY MR. BRANCART:

17 Q Sir, was there any distinction or meaning
18 that Travelers intended to communicate in identifying
19 public as well as subsidized housing in the ineligible
20 operation?

21 A There was no further clarification of those
22 words.

23 Q Was there any meaning that Travelers intended
24 to communicate by indicating subsidized along with
25 government funded and public housing in the ineligible

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231

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Kearney, Brian

1 BY MR. BRANCART:

2 Q More landscaping activities?

3 MR. PETERSON: Same objection.

4 A Not that I'm aware of.

5 BY MR. BRANCART:

6 Q More repair activities?

7 MR. PETERSON: Same objection.

8 A Not that I'm aware of, although, again, the
9 question of subsidized tenants does bring the
10 underwriting question of is there sufficient funding
11 for upkeep and maintenance of premises.

12 BY MR. BRANCART:

13 Q And the information that's gathered by
14 Travelers to ascertain whether or not there is
15 sufficient funding for an apartment to maintain itself
16 or to have maintenance, what is the instrument that's
17 used in Travelers Express?

18 A There's no specific instrument used. It's
19 inferred in the fact that there is no rental subsidy
20 for any of the tenants. It's inferred that the insured
21 is getting the best market rate they can for the unit,
22 and as a result, that based on other factors, looking
23 at age, updates to the building and loss information,
24 that they are able to maintain the property
25 effectively.

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241

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Kearney, Brian

1 Pac, true?

2 MR. PETERSON: Objection, overbroad.

3 A We use our ineligibility, ineligible
4 operations guidelines in that regard.

5 BY MR. BRANCART:

6 Q Perhaps I need to restate my question.
7 Travelers does not utilize any instrument or collect
8 data in association with its Travelers Express
9 automatic underwriting system for Apartment Pac, it
10 doesn't gather data on any of these when people are
11 paying their rents, whether or not there is a change in
12 rental rates, and I believe you made one other -- oh,
13 the amount of rents paid. That's just not gathered?

14 A No. Again, it's inferred that in the private
15 housing market that a well maintained apartment
16 building will get the highest market rate available,
17 and we look at things like vacancy and building age and
18 upkeep and any loss activity as signs of either
19 corroborating that inference or suggesting that that's
20 not true in a given case or not.

21 Q Sir, does the presence of a Section 8 renter
22 in a private housing apartment lead to lower rates of
23 preventative maintenance?

24 MR. PETERSON: Objection, asked and
25 answered.

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244

9/19/2014

Kearney, Brian

1 BY MR. BRANCART:

2 Q And the question raised is what, sir?

3 MR. PETERSON: Asked and answered.

4 A Is there sufficient funding available in
5 order to maintain housekeeping.

6 BY MR. BRANCART:

7 Q And that is sufficient funding because a
8 subsidy is involved?

9 A Yes.

10 Q Sir, does the presence of a Section 8 renter
11 in a privately owned and operated apartment complex
12 lead to lower rates of renter's insurance being
13 obtained by tenants?

14 A I don't know.

15 Q Does Travelers Express for the Apartment Pac
16 ask whether or not any of the tenants have renter's
17 insurance?

18 A No, it doesn't.

19 Q Sir, is there a separate risk retention group
20 for private landlords that rent to one or more Section
21 8 tenants?

22 A Not that I'm aware of.

23 Q Is there any association with the number of
24 Section 8 tenants renting in a private apartment
25 complex and the risk of loss?

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246

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Kearney, Brian

1 BY MR. BRANCART:

2 Q Would you identify for me the person who
3 developed -- the person or persons who developed,
4 reviewed, or approved this language of this ineligible
5 operation?

6 A I don't know who was involved in developing
7 that language.

8 Q Sir, I want to direct your attention to
9 Exhibit 215. Do you recognize Exhibit 215?

10 A Yes.

11 Q What is it?

12 A Exhibit 215 is the St. Paul Travelers Master
13 Pac Apartment Pac underwriting criteria and general
14 criteria and property criteria. It's the underwriting
15 criteria for the various lines of business for
16 Apartment Pac.

17 Q During what period of time was this the
18 underwriting criteria that governed Apartment Pac?

19 A This would have been -- this was the
20 eligibility that was put in place after the merger and
21 prior to the completion and implementation of the 2005
22 CURE.

23 Q When you say after the merger, you're
24 referring to the 2004 St. Paul Travelers merger?

25 A Yes.

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252

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Kearney, Brian

1 Q I direct your attention, please, to the page
2 that ends in Bates 22. This is the ineligible
3 operation list in connection with those underwriting
4 standards, correct?

5 A Yes.

6 Q Sir, it identifies two relevant entries, one
7 says public housing including Section 8 properties, the
8 other says subsidized or government funded complexes.
9 Do you see that?

10 A Yes.

11 Q Would you please state for me why this
12 language change occurred from Exhibit 213, which was
13 the referral rule that we looked at, and what we see
14 here in Exhibit 215?

15 A So, I can't speak to specifically why this
16 wording was chosen. I can say that when the two
17 companies came together in the small commercial space
18 teams were looking at the guidance from both companies
19 and bringing those together in a way that would come
20 together as one set of guidance.

21 MR. PETERSON: Excuse me. Counsel, I do
22 want to forewarn you, as we briefly discussed off the
23 record at our last break, we do intend to end this
24 deposition after seven hours on the record.

25 I understand that you made a statement

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253

9/19/2014

Kearney, Brian

1 to me that you believe the Federal Rules require that
2 you be permitted enough time to conduct a fair
3 examination.

4 As I said to you, I think that you will
5 have examined Travelers pursuant to your 30(b)(6)
6 notice for 14 hours, including the deposition of Brad
7 Wood, and I do note that according to my notes it was
8 about four hours into the deposition today before you
9 asked the witness a question about subsidized housing.

10 So I understand you preserve your
11 rights, but I do want to forewarn you that we are
12 adjourning the deposition after seven hours. So I
13 think we're getting close.

14 BY MR. BRANCART:

15 Q Sir, would you please identify for me who, or
16 which group of persons determined the language that
17 appears on page 22 of Exhibit 215?

18 A I don't know who put those words together.

19 Q Please identify who reviewed and approved the
20 inclusion of this language?

21 A I don't know who reviewed or approved the
22 language.

23 Q Sir, please state for me why it is that the
24 language, quote, Including Section 8 properties, is
25 included here in conjunction with public housing?

9/19/2014

Kearney, Brian

1 A I don't know. I don't know why that specific
2 wording exists.

3 Q Sir, I would like to direct your attention
4 now to Exhibit 216. Please identify this exhibit for
5 us.

6 A These are underwriting guidelines for the
7 apartment segment for St. Paul Travelers. I was
8 hesitating -- I was looking for a date. It dates to
9 2005.

10 Q Would you please state for me during what
11 time period these underwriting guidelines, including
12 their statement of the ineligible operations, were in
13 force at Travelers, then as Travelers St. Paul?

14 A So these were in force from 2005 until the
15 time we changed the wording as a result of the 2005
16 Habitational CURE, Apartment CURE.

17 Q This wording that appears here on the page
18 Bates ending in 94 appears to be identical to that that
19 appears in the prior Exhibit 215. Am I seeing that
20 correctly?

21 A Yes.

22 Q Sir, I would like to direct your attention to
23 Exhibit 217. Would you please identify this document
24 for us?

25 A It looks like it's an internal document that

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255

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Kearney, Brian

1 notes recommended changes to the Master Pac and Pac
2 plus agents manual and the internal manual outlining
3 changes to portions of the Apartment Pac section of the
4 manual.

5 Q Do you understand this to be a document that
6 was created in the course of the 2005 CURE process?

7 A That's my understanding.

8 Q I direct your attention to the third bullet,
9 quote, Remove public housing including Section 8
10 properties on the ineligible list. Do you see that?

11 A Yes.

12 Q Who is it that made that recommendation?

13 A I don't know.

14 Q Who approved that recommendation?

15 A I don't know.

16 Q I direct your attention to the next bullet,
17 quote, Revise subsidized or government funded complexes
18 to read subsidized public or government funded
19 complexes on the ineligible list.

20 Who determined that that language,
21 recommended that that language change should be made?

22 A I don't know. It came out of the CURE, but I
23 don't know who specifically came up with that wording.

24 Q Who approved that language change?

25 A I don't know.

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256

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Kearney, Brian

1 JURAT

2

3 I, BRIAN KEARNEY, do hereby certify that the
4 foregoing testimony taken on September 19, 2014, is
5 true and accurate, including any corrections noted on
6 the corrections page, to the best of my knowledge and
7 belief.

8

9

10

 BRIAN KEARNEY

11

12

13

14

15 At _____ in said county of _____,
16 this _____ day of _____, 2014, personally
17 appeared BRIAN KEARNEY, and he made oath to the truth
18 of the foregoing corrections by him subscribed.

19

20

21 Before me, _____, Notary Public

22 My commission expires:

23

24

25

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260

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Kearney, Brian

1

CERTIFICATE OF REPORTER

2 I, Robin Balletto, a Registered Professional
3 Reporter/Notary Public within and for the State of
4 Connecticut, do hereby certify there came before me, on
5 the 19th day of September, 2014, the following named
6 person, to wit: BRIAN KEARNEY, who was by me duly
7 sworn to testify to the truth and nothing but the
8 truth; that he was thereupon carefully examined upon
9 his oath and his examination reduced to writing under
10 my supervision; that this deposition is a true record
11 of the testimony given by the witness.

12 I further certify that I am neither counsel
13 for, related to, nor employed by any of the parties to
14 the action in which this deposition is taken; and
15 further, that I am not a relative or employee of any
16 attorney or counsel employed by the parties hereto, nor
17 financially or otherwise interested in the outcome of
18 the action.

19 WITNESS my hand and affixed my seal this 23rd day
20 of September, 2014.



21

Robin Balletto, RPR

22

23

24

25

My commission expires: October 31, 2018

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LINCOLN JONES, JR. and
MUYESSER NILE JONES,
individually and as trustees
of the Lincoln and M. Nile
Jones Revocable Trust; and
PROJECT SENTINEL, INC.,

Plaintiffs,

vs.

Case No.
CV 13-02390 LHK PSG

TRAVELERS CASUALTY INSURANCE
COMPANY OF AMERICA,

Defendant.

/

VIDEOTAPED 30(B)(6) DEPOSITION OF BRIAN KEARNEY

VOLUME II

PAGES 263 to 420

DATE: Tuesday, November 4, 2014

TIME: 1:12 p.m. - 4:43 p.m.

LOCATION: Carlson Calladine & Peterson, LLP
353 Sacramento Street, 16th Floor
San Francisco, California

REPORTED BY: SHELLEY M. SAILOR
California CSR No. 10254

MBreporting
111 Deerwood Road, Suite 200
San Ramon, CA 94583
(925) 989-6080

1 reporter please administer the oath.
2 BRIAN KEARNEY,
3 called as a witness and, having been by me duly
4 sworn, was thereupon examined and testified as
5 hereinafter set forth.

6 EXAMINATION (RESUMED) BY MR. BRANCART

7 Q. Good afternoon, sir. Would you please
8 state your full name and spell your last name.

9 A. Brian Kearney, K-e-a-r-n-e-y.

01:14 10 Q. Please state your current business address.

11 A. Is One Tower Square, Hartford, Connecticut.

12 Q. And ZIP code, please. If you know it.

13 A. That, I'm afraid I don't recall.

14 Q. That's no problem. State your current
01:14 15 business telephone.

16 A. Is 860-954-7522.

17 Q. State your current business email.

18 A. Is btkearne@travelers.com.

19 Q. Since your last deposition on
01:14 20 September 19th, 2014, have your job duties changed?

21 A. No, they haven't.

22 Q. Since your last deposition on
23 September 19th, 2014, have the persons for the job
24 titles that report to you changed?

01:14 25 A. I do have one new employee.

1 A. No, it is not.
2 Q. Sir, would you please go ahead and direct
3 your attention to the far right-hand corner of the
4 first page of Exhibit 306. One of the columns
01:44 5 reads, "Companion Rules BRID." Do you see that?

6 A. Yes.

7 Q. What information is recorded in that
8 column?

9 A. Nothing on this exhibit.
01:44 10 Q. If there were data populating that column,
11 what would it represent?

12 MR. FRANKEL: Object to form.

13 THE WITNESS: It's a -- this is a way for
14 us to aggregate rules that may apply in same or
01:45 15 similar situations. It's a way for us to manage our
16 rules.

17 BY MR. BRANCART:

18 Q. Okay. Sir, immediately to the right of
19 that there is a column that says, "CW." Do you see
01:45 20 that?

21 A. Yes.

22 Q. What does CW stand for?

23 A. Countrywide.

24 Q. To the right of that is AL, and it proceeds
01:45 25 on to the end of page AI. These are initials for

Jones v. Travelers

1 states. Correct?

2 A. Yes.

3 Q. Proceed to the next page. We have initials

4 for the balance of the states that comprise the

01:45 5 Continental United States. Correct?

6 A. Yes.

7 Q. And I should say also Hawaii and Alaska.

8 So it's not just the Continental United States.

9 They comprise the United States. Correct?

01:45 10 A. Yes.

11 Q. What information is to be recorded there?

12 A. Some of our rules can apply for a specific

13 state, geographic regions, and so that's a way for

14 us to track how those rules are applying.

01:46 15 Q. If, for example, a state outlawed

16 explicitly discrimination against assisted living

17 facilities, one of the ineligible operations, that

18 rule would be populated here. Is that correct?

19 MR. FRANKEL: Object to form. Foundation.

01:46 20 THE WITNESS: We would have to populate a

21 field for a specific state in the event that the

22 state had a specific requirement. The way you

23 stated your question, we would actually have to

24 split out assisted living as a separate rule and

01:46 25 then apply it to that state.

1 BY MR. BRANCART:

2 Q. And it would be documented here in the

3 rules inventory adjacent to the state code with some

4 kind of indicator. Correct?

01:46 5 MR. FRANKEL: Object to form. Foundation.

6 THE WITNESS: Yes. If that were the case.

7 BY MR. BRANCART:

8 Q. There are no individualized state

9 indicators listed in this rule set. Correct?

01:47 10 A. Correct.

11 Q. As far as you know, there were no

12 separately programmed criteria on an individual

13 state basis during the period of time that

14 Exhibit 306 reflected the rules inventory for IENet,

01:47 15 also referred to as Travelers Express. True?

16 A. Yes.

17 MR. FRANKEL: Object to form.

18 BY MR. BRANCART:

19 Q. Direct your attention to Exhibit 307. The

01:47 20 testimony you provided for Exhibit 306 is

21 substantially similar to what you provide here in

22 terms of identifying these columns. Is that

23 correct?

24 MR. FRANKEL: Object to form.

01:47 25 THE WITNESS: Yes.

1 BY MR. BRANCART:

2 Q. Is there anything that is unique -- strike

3 that.

4 Is there anything that you testified about

01:47 5 Exhibit 306 in terms of column identification that

6 does not apply here to Exhibit 307?

7 MR. FRANKEL: Object to form. Vague and

8 ambiguous, compound.

9 THE WITNESS: No. I don't believe so.

01:48 10 BY MR. BRANCART:

11 Q. This, then, would be the rule set for the

12 effective period in California from October 2013 to

13 present. Correct?

14 A. Yes.

01:48 15 Q. It has at the top of the page "Rule

16 Effective Date." Do you see that?

17 A. Yes.

18 Q. It says, "July 9th, 2011." Do you see

19 that?

01:48 20 A. Yes.

21 Q. What does that date indicate?

22 A. That was the date the rule first became

23 effective in the second gen Travelers Express

24 system.

01:48 25 Q. And do you know a list of states as to how

1 it rolled out?

2 A. I don't have that with me.

3 Q. Sir, would you please go ahead and direct

4 your attention to the Bates 157138 of Exhibit 307.

01:49 5 And specifically directing your attention to the

6 column that is CW for countrywide. Correct?

7 A. Yes.

8 Q. You see that?

9 A. I am there. Yeah.

01:49 10 Q. There is an X indicated there. Do you see

11 that?

12 A. Yes.

13 Q. What does that X mean?

14 A. That means that this rule applies on a

01:49 15 countrywide basis.

16 Q. And the very same X appears in the prior

17 exhibit, Exhibit 306. Is that correct?

18 A. Yes.

19 Q. To the top, the CW, we have the state codes

01:50 20 AL up to KY for Kentucky. Correct?

21 A. Yes.

22 Q. On the next page we have WY for Wyoming

23 down to LA for Louisiana. Correct?

24 A. Yes.

01:50 25 Q. What is the purpose of having the separate

Jones v. Travelers

1 state categories?

2 MR. FRANKEL: Object to form, foundation.

3 THE WITNESS: Some of our rules could apply

4 at just a state level, and so that's why this table

01:50 5 is built, to show that.

6 BY MR. BRANCART:

7 Q. There are -- there is no data recorded

8 adjacent to any of the states that are identified

9 here on the Bates pages 138 and 139. True?

01:50 10 A. Correct.

11 Q. There were no separate rules recorded for

12 any of the states in terms of the second gen rules

13 inventory that governed the operation of second gen.

14 True?

01:51 15 MR. FRANKEL: Object to form, foundation.

16 THE WITNESS: For this particular rule, the

17 Apartment Pac --

18 MR. BRANCART: Right.

19 THE WITNESS: -- segment eligibility.

01:51 20 BY MR. BRANCART:

21 Q. Yes. Exactly. That's for what we're

22 looking at here.

23 A. Yes.

24 Q. If there were specific state-based rules

01:51 25 that applied to this particular rule inventory for

1 apartment -- Apartment Pac second gen Travelers
2 Express, what would be indicated here adjacent to
3 one of the state codes on 138 and 139?

4 MR. FRANKEL: Object to form.
01:51 5 THE WITNESS: There would be an X placed
6 next to the state.

7 BY MR. BRANCART:
8 Q. Sir, would you please give me an example --
9 strike that.

01:51 10 Exhibit 306 and 307 are the rules inventory
11 for the ineligible operation associated with the
12 Travelers Express Apartment Pac system. True?

13 A. Yes.
14 Q. And that's all that's represented here.

01:52 15 Correct?

16 A. Yes.
17 Q. Give me an example of a situation where
18 there is a state unique rule that would affect the
19 rules inventory in the Travelers Express system.

01:52 20 A. We could have a rule and do have rules in
21 some of our coastal eastern states where we require
22 a certain wind deductible based on the location of
23 the property. So that would be an example where
24 there would be a state-specific rule for property
01:52 25 coverage.

1 Q. Okay. Exhibit 307 sets forth the rules
2 inventory that have been in place from the effective
3 date as indicated on the first page, July 9th, 2011
4 to present. Correct?

01:53 5 A. Yes. This is when it first went in place
6 in the system. In that system.

7 Q. During that period of time, July 9th, 2011
8 to today, there have been no separate rules
9 identified on a state-by-state basis for Travelers
01:53 10 Express for the date reported here -- I should say
11 the function reported here, the ineligible
12 operation. Is that correct?

13 MR. FRANKEL: Objection. Foundation,
14 beyond the scope.

01:53 15 THE WITNESS: That's correct with regard to
16 this rule.

17 BY MR. BRANCART:

18 Q. And regarding the prior document,
19 Exhibit -- what was the prior document? Was it 306?
01:53 20 Yeah. Exhibit 306, there is no X populated next to
21 any of the states. Correct?

22 A. Correct.

23 Q. And there were no specific state-based
24 rules that governed the operation of Travelers
01:54 25 Express during the period of time it was the

Jones v. Travelers

1 so-called first gen or from its effective date
2 July 1st, 2006 till it was superseded by second gen
3 as reflected in Exhibit 307. Is that correct?
4 MR. FRANKEL: Object to form.
01:54 5 THE WITNESS: Yes, with regard to the
6 ineligible operations.
7 BY MR. BRANCART:
8 Q. All right. So I just want to be clear. So
9 regarding the ineligible operations, there has never
01:54 10 been programmed into the rule set that governs the
11 operation of Travelers Express any unique state
12 rules. Is that correct?
13 A. With regard to the ineligible operations,
14 that's correct.
01:54 15 Q. And that's true for the first gen and
16 second gen. Correct?
17 A. Yes.
18 (Exhibit 308 was marked for
19 identification.)
01:55 20 BY MR. BRANCART:
21 Q. Okay. Show you Exhibit 308. Do you
22 recognize this document?
23 A. I do.
24 Q. What is it?
01:55 25 A. It's a training document for our business

1 :::: DECLARATION OF WITNESS ::::

2 I hereby declare I am the deponent in the
3 within matter; that I have read the foregoing
4 deposition and know the contents thereof, and I
5 declare that the same is true of my knowledge except
as to the matters which are therein stated upon my
information or belief, and as to those matters, I
believe it to be true.

6 I declare under the penalties of perjury of
the State of California that the foregoing is true
and correct.

7

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, (City), (State)

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11 BRIAN KEARNEY

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1 | :::: CERTIFICATE OF REPORTER ::::

2

3 I, SHELLEY M. SAILOR, a Certified Shorthand
4 Reporter, holding a valid and current license issued
by the State of California, CSR No. 10254, duly
authorized to administer oaths, do hereby certify:

5 That the witness in the foregoing
6 deposition was by me duly sworn to testify the truth
7 in the within-entitled cause; that said deposition
8 was taken at the time and place therein cited; that
9 testimony of said witness was reported by me and
thereafter transcribed under my direction into
typewriting; that the foregoing is a complete and
accurate record of said testimony; and that the
witness was given an opportunity to read and correct
said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself of the opportunity to sign or the signature has been waived.

I further certify that I am not of counsel nor attorney for any of the parties in the foregoing deposition and caption named nor in any way interested in the outcome of the cause named in said caption.

5 Reading and Signing was NOT REQUESTED.

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7 DATED: November 18, 2014

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Shelley M. Savor

SHELLEY M. SAILOR
California CSR No. 10254